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May 1, 2007
ELECTRONIC FILING VIA EFCS

Public Communications Services, Inc.
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Ms. Marlene H. Dortch, FCC Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, DC 20554

RE: CC Docket No. 96-128
Comments on Implementation of Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996

Dear Ms. Dortch:

Please find attached Comments, filed on behalf of Public Communications Services, Inc. on the alternative rulemaking proposal submitted by Martha Wright, *et al.* (Petitioners) on March 1, 2007, CC Docket No. 96-128.

Any questions you may have pertaining to this filing may be directed to me at (407) 740-8575 or via email at mbyrnes@tminc.com. Thank you for your assistance.

Sincerely,

Monique Byrnes, Consultant to
Public Communications Services, Inc.

MB/sp
Attach.

cc: Lynne Engledow (via email to Lynne.Engledow@fcc.gov)
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the Telecommunications)	
Act of 1996)	
)	
Petition for Rulemaking or, in the)	
Alternative, Petition to Address Referral)	
Issues In Pending Rulemaking)	

COMMENTS OF PUBLIC COMMUNICATIONS SERVICES, INC.

Public Communications Services, Inc., (PCS) hereby files these Comments in response to the Federal Communication Commission's (FCC) Public Notice seeking comment on the alternative rulemaking proposal submitted by Martha Wright, et al. (Petitioners) on March 1, 2007.¹ The Petition asks the FCC to adopt benchmark rates for long distance prison inmate calling services. For the reasons set forth below, the relief requested by the Petitioners is unnecessary. As PCS demonstrates, the marketplace is already acting to ensure lower calling rates for inmates and more call pricing options, including debit calling. The trend in the industry is away from more expensive collect calling services and towards less expensive debit calling services and prepaid options. Indeed, most new Requests For Proposal (RFPs) that PCS has responded to include provisions for providing debit services and lowest rate bidding criteria with no commissions or low commissions. Therefore, the marketplace is already moving in the direction proposed

¹ Public Notice, DA 07-961, CC Docket No. 96-128, released March 2, 2007.

by Petitioners, and will continue to do so, without any action by the FCC. Since regulatory intervention is not necessary, the FCC should deny the Petition.

I. INTRODUCTION AND BACKGROUND

A. Statement of Interest

PCS is a California-based provider of inmate telephone services. PCS has been providing these services since 1992. PCS's business focuses on large federal, state, and local correctional agencies in excess of 1,000 inmate beds. PCS currently provides service to more than 100,000 inmates including the Federal Immigration and Customs Enforcement Agency (ICE), Department of Corrections (DOC) institutions in nine states (Delaware, Idaho, Iowa, Maine, Missouri, Montana, New Hampshire, New Mexico, and Vermont), and various large county and local agencies throughout the country.

Over the last five years, PCS has promoted less expensive, alternative debit services and a "lower rates for lower commissions" strategy. PCS's response to an RFP typically includes an offering for automated debit services, as well as lower rates for either no commissions or lower commissions. As a result, more and more of the traffic PCS handles is in the form of lower-priced calling options. Indeed, debit calling accounted for nearly one-third of PCS's call volume in January 2007 and prepaid calling accounted for another 20%. This compares to January 2000 when 100% of calling was collect.

B. Background

This proceeding has been pending before the FCC since December 2003. At that time, the Petitioners asked the FCC to prohibit collect-call only restrictions and require the prisons to permit multiple long distance carriers to interconnect with prison telephone systems. Now, they ask the FCC to consider an alternative proposal which would establish

benchmark rates for long distance prison inmate calling services. The Petitioners assert that their new proposal is “far simpler and less regulatory” than their first proposal.

Under the Petitioners’ new proposal, the FCC would set an arbitrary benchmark rate for domestic interstate interexchange inmate debit calling service of \$0.20 per minute and a benchmark rate for domestic interstate interexchange inmate collect calling service of \$0.25 per minute, with no set-up or other per-call charge. Inmate Telephone Providers (ITPs) could continue to offer services under exclusive service arrangements and pay commissions to prison administrators as long as they charged the benchmark rates. In addition to the rate relief, the Petitioners request that the FCC require that debit calling be universally available at all prison facilities. This is intended to avoid problems associated with ITP blocking of inmate collect calls to numbers served by local carriers who refuse to provide billing agreements.

II. THE MARKETPLACE IS ALREADY MOVING TOWARDS LOWER COMMISSIONS AND LOWER COST CALLING OPTIONS

The marketplace is already driving rates and options in the direction sought by Petitioners. The trend of no commission started approximately eight years ago with the Federal Bureau of Prisons (FBOP) and the ICE institutions. Since then, multiple states (New Mexico, Missouri, Nebraska, and New York) and counties have reduced or eliminated commissions other than those necessary to recover the direct costs of administering the system. Recently, Indiana and Georgia adopted rate commission guidelines for their DOC and/or local agencies.

With increasing frequency, DOCs are renegotiating terms after contracts have been awarded and requesting rate reductions in exchange for lower commissions. The majority of RFPs issued today that PCS has responded to include provisions for providing debit services

and include lowest rate bidding criteria. DOCs are requesting more call pricing options and de-emphasizing collect calling services. PCS, among other ITPs, is responding to these requests with offers of lower priced debit alternatives and other innovative offerings. There is no market failure.

Petitioners tacitly acknowledge this industry trend with their benchmark proposal and apparently believe that by imposing these “best practices” rates on all correctional facilities they can force the marketplace to change overnight. Unfortunately, this is not the case.

The correctional marketplace is a complex one comprised of hundreds of unique facilities. Each facility has different security needs, different commissary arrangements, different funding mechanisms, and different governing laws. Carriers such as PCS have offered, and will continue to offer, new technologies and lower rate alternatives but carriers cannot require facilities to accept them. To the extent that the marketplace has been slow to adopt lower commissions and lower rates it is not due to the lack of effort on the part of the ITP industry. Rather, it is due to the individual circumstances of each DOC, which in many cases limit or even prohibit their ability to consider such alternatives.

As demonstrated below, these limitations are real but have been, and will continue to be, addressed over time. Overcoming these issues requires education for DOC personnel and, sometimes, fundamental overhauls of the way the DOCs are funded or structured. Imposing arbitrary rate limits on ITPs will not solve these institutional problems. It will only force some ITPs out of business and force some DOCs to cease providing, or restrict inmate phone services.

The free market is working. Rates are coming down where they can and the trend is accelerating. The FCC should allow the market to continue its steady pace towards optimum

rates and calling options. It is the DOCs and local, state, and federal legislators who are in the best position to determine the optimum mix of prices, services, and costs to serve their constituencies – not the FCC.

III. ADOPTION OF THE BENCHMARK PROPOSAL IS NOT IN THE PUBLIC INTEREST

A. The Unique Circumstances Of Each DOC Must Be Recognized

By failing to recognize legitimate cost and funding differences between correctional facilities, Petitioner's proposal will lead to reduction in the telephone services available to inmates. Cost structures vary from facility to facility. If the rates do not recover costs, the service will not be offered. For example, the State of Texas Department of Corrections does not have inmate telephone service.

The direct costs associated with administering inmate telephone service vary from facility to facility. Inmate telephone service requires special security technology and hardware and must include other capabilities not necessary to support traditional direct dial calling from homes and offices. Additionally, the provision of debit service requires the installation and maintenance of an expensive software interface between the ITP calling platform and the commissary provider's premise. These costs vary depending on the security needs of the facility, the vendor, and other considerations that have nothing to do with the provision of the telephone service. Whether these costs are borne by the facility or the ITP, they are a legitimate cost that must be recovered to ensure the ongoing operation of inmate telephone systems. One-size-fits-all benchmarks do not take these varying costs into account.

Similarly, the costs of administering the sale of debit time can vary from facility to facility depending on the arrangement between the DOC and its contracted commissary

vendor (who often is the party who administers the sale of the debit time). Often, a commissary provider will refuse to sell debit time unless the ITP offers a handling fee on all debit purchases. With benchmarks, the ITP may be precluded from offering debit service because the commissary administrative fees cannot be recaptured and there is no other way to offer the service.

Finally, the Petitioners fail to acknowledge the positive impact the payment of commissions has had on the services offered to inmates. Commissions have become a fundamental way for DOCs to support various other inmate programs and services. Two examples of services funded directly with the inmate telephone commissions provided by PCS are the telemedicine program in New Mexico and the video visitation system in the County of Bernalillo. If commissions are lowered or eliminated, facilities which do not have alternative funding options may restrict or eliminate inmate calling services. Whether such services should be offered and whether they should be funded by inmates and their families or by taxpayers in general are decisions that should be made at the state or local level, not by federal telecommunications regulators.

B. It Is Not Practical to Mandate the Provision of Debit Card Calling

Petitioners ask the FCC to mandate that debit calling be universally available. While PCS agrees that debit calling should be universally available, it is not practical at this time. To date, PCS has offered debit service to all its facilities but only has approximately 60% penetration among its DOC facilities. This is because of inherent obstacles in the correctional environment which cannot always be overcome.

As an initial matter, the DOCs themselves are often skeptical about the desirability of offering debit card service. Some believe that debit time has the potential to become

contraband, which could compromise security (even though this concern has not proven to be a major problem at DOCs currently offering debit service). Others oppose debit service because it requires additional administrative workloads and support. In the latter case, the ability to ensure that the facility recovers its administrative cost is a key part of gaining its support.

Second, the implementation of debit calling service is primarily dependent upon the existence of an efficient means to administer debit purchases. This is typically done through existing commissary operations. However, commissary operators are in the business of selling commissary items, not telephone service. Many perceive the purchase of debit service as direct competition to their primary business. They have little or no incentive to facilitate debit sales, especially for free. Benchmarks limit the ability of the ITP or DOC to reimburse the commissary vendor for the expense of offering the cards for sale. Such reimbursement of point of sale vendors is common in the non-correctional facility debit card market.

In smaller correctional facilities, defined as less than 1,000 beds, there often is no in-house commissary system. Implementing a debit service outside of existing DOC commissary systems requires an expensive stand-alone administrative system run by the ITP or DOC and also requires additional investment and cost. By limiting the rates that can be charged, benchmarks deny the ITP the opportunity to address these issues. Prices must be flexible enough to account for the different types of debit purchase administrative configurations discussed above.

It should be noted that despite these technology and administrative costs, the prices for inmate debit service continue to decline, making it a more affordable option for both facilities and inmates.

IV. THE COSTS ASSOCIATED WITH COLLECT CALLING ARE LARGELY BEYOND THE CONTROL OF THE ITP

The benchmark proposal assumes that ITPs can offer collect calling at lower rates but simply choose not to do so in order to pay high commissions and enjoy profits. This is not the case. ITPs face embedded, unavoidable costs associated with processing collect calls. These costs are unique to collect calling and include: LEC billing and collection fees; LEC charge backs and true-up policies for disputed calls; high uncollectible and unbillable rates; and extraordinary account receivable delays.

First and foremost, ITPs have little choice but to use LEC billing services if they want to be compensated for collect calls. Industry experience with direct billing is that collection rates are very low (50% in PCS's experience) since customers see no downside (*e.g.*, loss of local service) for failure to pay the bill. Thus, ITPs are captive to local exchange carrier billing. ITPs have no control over the LEC's charges for billing, collection, and inquiry. Nor do they have the leverage necessary to negotiate more favorable terms and conditions for the timing of true-ups or the manner in which charge-backs are handled. Billing clearinghouses face the same obstacles. In addition, some LECs, especially CLECs, will simply not enter into any billing agreements with third party carriers.

Under the LEC billing contracts, ITPs are assessed up-front costs per billing page, and a per billing record charge. These charges have risen sharply over the last few years and now can be as high as \$0.68 per billing record and \$2.10 per page. Given that in some institutions the average call duration is only 5 minutes, billing costs alone can easily exceed the revenue that could be generated by a call rated at the benchmark levels proposed by Petitioners.

ITPs have attempted to recover these new costs through additional billing surcharges

or fees which are exclusive of commissions. Such billing fees are monthly surcharges added to a LEC collect called party bill on a per bill, not per call, basis. Many ITP tariffs include this fee because capped intrastate rates do not allow for recovery of these fixed costs and/or are not reviewed with enough frequency to adjust for increased costs. Indeed, like the benchmarks proposed by Petitioners, such caps are often set without regard to costs or marketplace considerations. These charges do not go into the ITP's pocket as a profit, but rather offset the increased costs of processing collect calls. As such, they are legitimate charges which the benchmark proposal fails to accommodate.

Collect calls also have high uncollectible rates. Once a call is written-off by the LEC as an uncollectible it is charged back to the ITP, often up to 18 months after the call was made. Similarly, collect calls have high unbillable rates. (An unbillable call occurs when a call which has been properly validated at the time it was placed cannot be billed because the end user subsequently cancelled service or changed phone numbers.) These charge-backs are trued-up on a bi-annual basis and often amount to 20% of all collect call revenue billed. These charge-backs are beyond the ITP's control and, again, they are not properly considered in the rate cap proposal.

In summary, the benchmark rates proposed by petitioners do not take any of these legitimate, fixed costs into account and therefore are confiscatory.

V. CONCLUSION

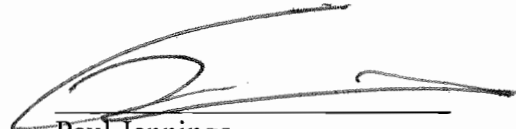
For the reasons set forth above, the FCC should deny the Petition and decline to pursue a rulemaking proceeding. The institutional marketplace is already moving in the direction Petitioners desire. Prices are being reduced and options are increasing. Given the nature of the industry change is, and must be, incremental. Providers such as PCS have

driven this change through their RFP responses and continuing efforts to educate DOCs to the benefits of adopting new technologies and alternative calling options. These efforts will continue. But change cannot and will not occur unless and until the DOCs are ready, willing and able to embrace them. ITPs cannot make this happen. Imposing the benchmarks requested by Petitioners will not make this happen. Patience and permitting this unique market to accept new ideas at its own pace is what is necessary to ensure lower prices and more calling options for inmates.

Respectfully submitted,

PUBLIC COMMUNICATIONS SERVICES, INC.

By:

A handwritten signature in black ink, appearing to read 'Paul Jennings', written over a horizontal line.

Paul Jennings
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Dated: May 1, 2007